IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 25044 of 2004(F)

AGAINST THE ORDER IN IA.862/2000 IN OS.216/1995 of SUB COURT,THODUPUZHA

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PETITIONER:

ISSAC, S/O. JOSEPH, VETTUKALLEL HOUSE, VENMATTOMKARA, VANNAPPURAM, THODUPUZHA.

BY ADV. SRI.K.K.CHANDRAN PILLAI

RESPONDENTS:

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1. **SOMARAJAN S/O. NANU, SNEHASADANAM, KOOVAPPURAM KARA, VANNAPPURAM, THODUPUZHA.**
2. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, TRIVANDRUM-1.**

BY ADV. SRI.JOICE GEORGE for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.25044/2004 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF DECREE DATED 1/11/1996 IN O.S.216/95 OF THE SUB COURT, THODUPUZHA.

EXT.P2: COPY OF I.A.861/00 FILED BEFORE THE SUB COURT, THODUPUZHA.

EXT.P3: COPY OF I.A.862/00 FILED BEFORE THE SUB COURT, THODUPUZHA.

EXT.P4: COPY OF OBJECTION FILED IN I.A.861/00.

EXT.P5: COPY OF OBJECTION FILED IN I.A.862/00.

EXT.P6: COPY OF ORDER DATED 4/12/2003 IN I.A.861/2000.

EXT.P7: COPY OF ORDER DTD. 4/12/2003 IN I.A.862/2000.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.25044 of 2004

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Dated: 11th July, 2007

JUDGMENT

The grievance of the petitioner in whose favour a decree for specific performance of a contract for sale was passed by the trial court is that the trial court dismissed the application filed by him for enlargement of time in the matter of remitting the balance sale consideration and also the application filed by him under Section 28 (3) of the Specific Relief Act for directing the respondent for executing the sale deed. The learned Subordinate Judge dismissed the application for enlargement of time taking the view that the court has no power under Section 148 to enlarge time beyond a period of 30 days and that the said power cannot be exercised in this case since the application for enlargement of time is seen filed after some two years of expiry of the time originally fixed. The court also noticed that no acceptable evidence was adduced by the petitioner to substantiate his contention that it was on account of rheumatic ailments that he was unable to deposit the balance amount within time. According to the court, even if it is true that the petitioner was having some ailments, it was upon the petitioner to entrust the matter to somebody else or to make alternative arrangements to

make deposit. The smallness of the amount involved was also taken note of by the learned Subordinate Judge. The application for direction to execute sale deed was dismissed as a consequence of Ext.P6 order dismissing the enlargement application.

2. I have heard the submissions of Mr.K.K.Chandran Pillai, learned counsel for the petitioner and Mr.Joice George, learned counsel for the 1st respondent.

3. Mr.Chandran Pillai would assail the orders on the basis of various grounds raised in the Writ Petition. He submitted that the 1st respondent had not filed any application within the stipulated time for repudiating the contract. He also submitted that the two applications submitted by the 1st respondent for setting aside the decree and for condoning the delay caused in the matter have been finally dismissed by the learned Subordinate Judge. Thus the decree stands confirmed as against the 1st respondent. An amount of Rs.1400/- was due to the petitioner by way of cost to the suit and after adjusting that amount the balance amount payable was only Rs.2900/-. Apart from the reason stated in the affidavit by the petitioner, there was another reason that there was some communication gap between the petitioner and the office of his Advocate in the court below.

4. Mr. Joice George, counsel for the 1st respondent would however support the impugned orders very forcefully. He would submit that though it is true that the application to set aside the ex parte order had been dismissed and that the 1st respondent had not filed any application for rescinding the contract, the explanation offered by the petitioner for not making the deposit on time was not at all convincing. The extent of property is only two cents and that too the situs of the residential house presently under the actual occupation of the wife of the 1st respondent. The circumstance that he is presently in miserable and impecunious circumstances should appeal to any court's sense of compassion, so submits the counsel.

5. I have considered the rival submissions. The view taken by the learned Subordinate Judge that the court has no power to enlarge the time particularly under Section 148 cannot be correct in view of the pronouncement by the Supreme Court in various decisions. I am not prepared to accept the argument of the counsel for the 1st respondent that the non-payment of the balance sale consideration was willful since the petitioner did not stand to gain anything by failing to deposit that amount which was after all, if adjustment was allowed for the sum of Rs.1400/- due to the

petitioner, only Rs.2900/-. The circumstances that the 1st respondent did not any step to get the agreement rescinded and that no steps have been taken so far by the 1st respondent against the order of the court dismissing the application to set aside the ex parte decree is of some relevance. The suit was for decree for specific performance and alternatively for recovery of a sum of Rs.11700/- which had been advanced on account of agreement for sale. The resulting position is that the petitioner has got a confirmed decree in his favour is not getting either the property or even what he had actually paid to the 1st respondent. Such a situation means injustice. At the same time the miserable circumstances in which the family of the respondent is presently placed cannot be totally lost sight of. I set aside Ext.P5 order, but only subject to certain conditions.

6. The result of the above discussion is that I.A.No.861/2000, the application for enlargement of time will stand allowed. But invoking the supervisory jurisdiction of this court which can be invoked so as to meet out substantial justice between the parties before the court, I direct that the petitioner will receive Rs.11700/- together with interest thereon at the rate of 3% per annum from 9.9.1994 till date of payment within four months from today. If the

amount is not so paid the order allowing I.A.No.861/2000 will become operative and the petitioner will have one more month's time from then to deposit the balance amount.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**